

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

MARIA L MORENO, *individually and on behalf of
others similarly situated,*

18-cv-08797

Plaintiff,

-against-

89 MONTCLAIR CLEANERS INC. (D/B/A 89
MONTCLAIR CLEANERS) AND, HYUN C KIM,

Defendants.

**SETTLEMENT AGREEMENT AND
RELEASE**

This Settlement Agreement and Release of Claims ("Agreement") is entered into by and among Plaintiff Maria L Moreno ("Plaintiff Moreno") on the one hand, 89 Montclair Cleaners Inc. (d/b/a 89 Montclair Cleaners), ("Defendant Corporation") and Hyun C Kim, ("Individual Defendant"), (collectively, "Defendants"), on the other hand.

WHEREAS, Plaintiff Moreno alleges that she worked for Defendants as an employee; and

WHEREAS, a dispute has arisen regarding Plaintiff Moreno's alleged employment and the terms thereof, which dispute has resulted in the filing of an action in the United States District Court for the Southern District of New York, Civil Action No: 18-cv-08797 (hereinafter "the Litigation"), alleging, among other things, a violation of federal and state wage and hour and overtime laws;

WHEREAS, Defendants deny any violation of federal and state wage and hour and overtime laws; and

WHEREAS, the parties desire to resolve all disputes between them without the necessity of further litigation;

NOW, THEREFORE, in consideration of the mutual covenants and promises herein contained and other good and valuable consideration, receipt of which is hereby acknowledged, it is hereby agreed as follows:

1. **Payment:** Defendants shall pay or cause to be paid to Plaintiff Moreno, subject to the terms and conditions of this Agreement, and as full, complete, and final settlement and final satisfaction of any and all claims or potential claims Plaintiff Moreno may have against Defendants through the Effective Date of this Agreement, including all counsel fees and costs incurred by Plaintiff Moreno, the gross sum of Twenty Thousand Dollars and No Cents (\$20,000.00) (the

"Settlement Amount") to be paid to Plaintiff Moreno's attorneys in Eight ("8") installments, as follows:

- a) Installment One: A post-dated check in the amount of One Thousand Six Hundred Sixty-Six Dollars and Sixty Seven Cents (\$1,666.67) made payable to "Plaintiff Maria L Moreno" and another post-dated check in the amount of Eight Hundred Thirty Three Dollars and Thirty Three Cents (\$833.33) made payable to "Michael A. Faillace, Esq., as Attorney for Plaintiff Moreno", for immediate deposit Thirty Days (30) after court approval of the settlement agreement, delivered to Plaintiff Moreno's counsel.
- b) Installment Two: A post-dated check in the amount of One Thousand Six Hundred Sixty-Six Dollars and Sixty Seven Cents (\$1,666.67) made payable to "Plaintiff Maria L Moreno" and another post-dated check in the amount of Eight Hundred Thirty Three Dollars and Thirty Three Cents (\$833.33) made payable to "Michael A. Faillace, Esq., as Attorney for Plaintiff Moreno", for immediate deposit Sixty Days (60) after court approval of the settlement agreement, delivered to Plaintiff Moreno's counsel.
- c) Installment Three: A post-dated check in the amount of One Thousand Six Hundred Sixty-Six Dollars and Sixty Seven Cents (\$1,666.67) made payable to "Plaintiff Maria L Moreno" and another post-dated check in the amount of Eight Hundred Thirty Three Dollars and Thirty Three Cents (\$833.33) made payable to "Michael A. Faillace, Esq., as Attorney for Plaintiff Moreno", for immediate deposit Ninety Days (90) after court approval of the settlement agreement, delivered to Plaintiff Moreno's counsel.
- d) Installment Four: A post-dated check in the amount of One Thousand Six Hundred Sixty-Six Dollars and Sixty Seven Cents (\$1,666.67) made payable to "Plaintiff Maria L Moreno" and another post-dated check in the amount of Eight Hundred Thirty Three Dollars and Thirty Three Cents (\$833.33) made payable to "Michael A. Faillace, Esq., as Attorney for Plaintiff Moreno", for immediate deposit One Hundred and Twenty Days (120) after court approval of the settlement agreement, delivered to Plaintiff Moreno's counsel.
- e) Installment Five: A post-dated check in the amount of One Thousand Six Hundred Sixty-Six Dollars and Sixty Seven Cents (\$1,666.67) made payable to "Plaintiff Maria L Moreno" and another post-dated check in the amount of Eight Hundred Thirty Three Dollars and Thirty Three Cents (\$833.33) made payable to "Michael A. Faillace, Esq., as Attorney for Plaintiff Moreno", for immediate deposit One Hundred and Fifty Days (150) after court approval of the settlement agreement, delivered to Plaintiff Moreno's counsel.
- f) Installment Six: A post-dated check in the amount of One Thousand Six Hundred Sixty-Six Dollars and Sixty Seven Cents (\$1,666.67) made payable to "Plaintiff Maria L

Moreno" and another post-dated check in the amount of Eight Hundred Thirty Three Dollars and Thirty Three Cents (\$833.33)made payable to "Michael A. Faillace, Esq., as Attorney for Plaintiff Moreno", for immediate deposit One Hundred and Eighty Days (180) after court approval of the settlement agreement, delivered to Plaintiff Moreno's counsel.

- g) Installment Seven: A post-dated check in the amount of One Thousand Six Hundred Sixty-Six Dollars and Sixty Seven Cents (\$1,666.67) made payable to "Plaintiff Maria L Moreno" and another post-dated check in the amount of Eight Hundred Thirty Three Dollars and Thirty Three Cents (\$833.33)made payable to "Michael A. Faillace, Esq., as Attorney for Plaintiff Moreno", for immediate deposit Two Hundred and Ten Days (210) after court approval of the settlement agreement, delivered to Plaintiff Moreno's counsel.
- h) Installment Eight: A post-dated check in the amount of One Thousand Six Hundred Sixty-Six Dollars and Sixty Seven Cents (\$1,666.67) made payable to "Plaintiff Maria L Moreno" and another post-dated check in the amount of Eight Hundred Thirty Three Dollars and Thirty Three Cents (\$833.33)made payable to "Michael A. Faillace, Esq., as Attorney for Plaintiff Moreno", for immediate deposit Two Hundred and Forty Days (240) after court approval of the settlement agreement, delivered to Plaintiff Moreno's counsel.

Within 30 days of this Agreement being approved by the Court, all of the post-dated checks/payments set forth above shall be delivered to the office of Michael Faillace & Associates, P.C. to the attention of Michael Faillace, Esq., 60 East 42nd Street, Suite 4510, New York, NY 10165. Failure to deliver said checks shall constitute a default under the Agreement. Both Plaintiff and Michael Faillace & Associates shall provide Defendants with signed 1099 forms.

Concurrently with the execution of this Agreement, Defendants 89 Montclair Cleaners Inc. (d/b/a 89 Montclair Cleaners) and Hyun C Kim shall each execute and deliver to Plaintiff Moreno's counsel confessions of judgment ("Confessions of Judgment") in the form annexed hereto as Exhibits respectively. The Parties hereby acknowledge and agree that the Confessions of Judgments will be held in escrow by Plaintiff Moreno's hereby irrevocably and unconditionally releases counsel, and will not be entered and/or filed at any time other than (i) in the event that the Defendants fail to make any of the installment payments as set forth above, i.e., one of the postdated checks fails to clear Moreno's counsel's escrow account, or Defendants fail to deliver the payments to Moreno's counsel within five days of the Court approving the Agreement, and (ii) Defendants fail to cure such default within ten (10) days of receipt of written notice (to be delivered to Defendants by first class mail via their counsel, Diane H Lee, Esq., at 16 W. 32nd street, Suite 305, New York, NY 10001. Any such Notice of Default shall be deemed received five (5) days after it is mailed.

2. **Release and Covenant Not To Sue:** Plaintiff Moreno hereby irrevocably and unconditionally releases from and forever discharges and covenant not to sue Defendants, and for each of them, their heirs, successors, assigns, affiliates, parent organizations, subsidiaries, directors,

owners, shareholders, members, agents, attorneys, legal representatives and managers any and all charges, complaints, claims, causes of action, suits, debts, liens, contracts, rights, demands, controversies, losses, costs and or expenses, including legal fees and any other liabilities of any kind or nature whatsoever, known or unknown, suspected or unsuspected, whether fixed or contingent (hereinafter referred to as "claim" or "claims") which each Plaintiff Moreno at any time has, had, claims or claimed to have against Defendants relating specifically to the claims in the Litigation that have occurred as of the Effective Date of this Agreement. Similarly, Defendants release and discharge Plaintiff Moreno from any and all known claims, and liabilities of any kind that they have, had or claimed to have against Plaintiff Moreno relating specifically to the claims in the Litigation that have occurred as of the Effective Date of this Agreement.

3. **No Admission of Wrongdoing:** This Agreement and compliance with this Agreement shall not be construed as an admission by Defendants of any liability whatsoever, or of any violation of any statute, regulation, duty, contract, right or order.
4. **Modification of the Agreement:** This Agreement may not be changed unless the changes are in writing and signed by a proper representative of Plaintiff Moreno and Defendants.
5. **Acknowledgments:** Plaintiff Moreno and Defendants acknowledge that they are not relying upon any statement, representation or promise in executing this Agreement except for statements, representations or promises expressly set forth in this Agreement. They further acknowledge and agree that the only consideration for signing this Agreement is as set forth in this Agreement.
6. **Notices:** Notices required under this Agreement shall be in writing and shall be deemed given on the first business day following first-class mailing and electronic transmission thereof. Notice hereunder shall be delivered to:

To Plaintiff Moreno:

Michael Faillace, Esq.
MICHAEL FAILLACE & ASSOCIATES, P.C.
60 East 42nd St. Suite 4510
New York, NY 10165
Tel: (212) 317-1200
Fax: (212) 317-1620
Email: michael@faillacelaw.com

To Defendants:

Diane H Lee
THE LAW OFFICE OF DIANE H LEE
16 W. 32nd street Suite 305
New York, NY 10001

Email: dlee@dhllaw.com

7. **Governing Law:** This Agreement shall be governed by, and interpreted in accordance with, the laws of the State of New York, excluding the conflict-of-laws principles thereof. The parties consent and stipulate to the personal jurisdiction of the United States District Court for the Southern District of New York and the Supreme Court of the State of New York in any subsequent proceeding to enforce this Agreement.
8. **Enforceability:** If any provision of this Agreement is held to be illegal, void, or unenforceable, such provision shall be of no force or effect. However, the illegality or unenforceability of such provision shall have no effect upon, and shall not impair the legality or enforceability of, any other provision of this Agreement, provided, however, that upon any finding by a court of competent jurisdiction that a release or waiver of claims or rights or a covenant set forth herein is illegal, void or unenforceable, Plaintiff Moreno agrees to promptly execute a release, waiver and/or covenant that is legal and enforceable.
9. **Release Notification:** Defendants advised Plaintiffs to discuss the terms of this Agreement and release of claims with their legal counsel and Plaintiffs acknowledge that they have consulted with Michael Faillace, Esq. of Michael Faillace & Associates, P.C., Plaintiff Moreno acknowledges that it is their choice to waive any potential claims in return for the benefits set forth herein and that each of them made this decision after careful thought and a reasonable period of time to consider this Agreement, and after an opportunity to consult with their attorneys. Plaintiff Moreno confirms that this Settlement Agreement and Release has been translated to them in Spanish and that they understand the terms of this Agreement and that they are signing this Agreement voluntarily.
10. **Counterparts:** To signify their agreement to the terms of this Agreement and Release, the parties have executed this Agreement on the date set forth opposite their signatures, which appear below. This Agreement may be executed in two or more counterparts and each of such counterparts, for all purposes, shall be deemed to be an original but all of such counterparts together shall constitute but one and the same instrument, binding upon all parties hereto, notwithstanding that all of such parties may not have executed the same counterpart. This agreement may also be executed by facsimile transmission.

PLAINTIFF:

By: Maria L. Moreno
MARIA L MORENO

Date: 5-20-2019

DEFENDANTS:

By: Choong Ki Lee
Sworn to before me this 15TH day
of MAY, 20 19
Choong Ki Lee
Signature of Notary

Date: 5-15-19

CHOONG KI LEE
Notary Public, State of New York
No. 31-01LE4961653
Qualified in New York County
Commission Expires Feb. 5, 2022

89 MONTCLAIR CLEANERS INC.

By:

Hyun C Kim

Date: 5-15-19

EXHIBIT A

SUPREME COURT OF THE STATE OF NEW YORK

----- X
MARIA L MORENO, *individually and on* :
behalf of others similarly situated, :
: Index No.:
Plaintiff, :
:
-against- : **AFFIDAVIT OF CONFESSION**
OF JUDGMENT
89 MONTCLAIR CLEANERS INC. (D/B/A 89 :
MONTCLAIR CLEANERS) AND, HYUN C KIM, :
:
Defendants. :
:
----- X

STATE OF NEW YORK)
: ss.:
COUNTY OF New York)

1. I reside in New York County.
2. I, Hyun C Kim, am the President 89 Montclair Cleaners Inc. (d/b/a 89 Montclair Cleaners). I am duly authorized to make this affidavit of confession of judgment on behalf of 89 Montclair Cleaners Inc. (d/b/a 89 Montclair Cleaners).
3. 89 Montclair Cleaners Inc. (d/b/a 89 Montclair Cleaners), maintains its principal place of business in New York County at 1349 Lexington Avenue, New York, NY 10128.
4. Pursuant to the terms of the Settlement Agreement and Release by and between Maria L Moreno (each a "Plaintiff" and collectively, "Plaintiffs") and 89 Montclair Cleaners Inc. (d/b/a 89 Montclair Cleaners) and, Hyun C Kim (each a "Defendant" and collectively, "Defendants"), to which this Affidavit is annexed, I hereby confess judgment and authorize entry thereof against 89 Montclair Cleaners Inc. (d/b/a 89 Montclair Cleaners) in favor of Plaintiffs for the sum of Thirty Thousand Dollars and No Cents (\$30,000.00), less any payments made under the Settlement Agreement.
5. This affidavit of confession of judgment is for a debt justly due to Plaintiffs under the terms of the Settlement Agreement, to which this Affidavit is annexed, which provides that Defendants are to submit a total sum of \$20,000.00 to Plaintiffs.
6. The amount of this affidavit of confession of judgment represents the settlement amount of \$20,000.00 plus liquidated damages of \$10,000.

7. This affidavit is made upon good and valuable consideration, the sufficiency of which I acknowledge on behalf of Defendants, including, without limitation, the terms and provisions of the Settlement Agreement.
8. I hereby represent my understanding that upon Defendants' breach of the Settlement Agreement and failure to cure, this Confession of Judgment shall be docketed and entered in the Supreme Court of the State of New York as a judgment for \$30,000.00 (less any amounts already paid to Plaintiffs pursuant to the above schedule), against 89 Montclair Cleaners Inc. (d/b/a 89 Montclair Cleaners).

89 Montclair Cleaners Inc.

By: Hyun C Kim
Hyun C Kim
Title: President

STATE OF New York,

: ss.:

On MAY 15, 2019, before me personally came Hyun C Kim, to me known, who, by me duly sworn, did depose and say that deponent resides at 1601 3RD AVENUE, NY, NY 10128, that deponent is the President of 89 Montclair Cleaners Inc. the party described herein, and that deponent executed the foregoing Affidavit of Confession of Judgment on behalf of 89 Montclair Cleaners Inc. and was authorized to do so.

Choong Ki Lee
Notary Public

CHOONG KI LEE
Notary Public, State of New York
No. 31-01LE4961653
Qualified in New York County
Commission Expires Feb. 5, 2022

EXHIBIT B

SUPREME COURT OF THE STATE OF NEW YORK

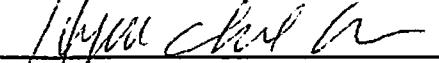
----- x
MARIA L MORENO *individually and on* :
behalf of others similarly situated, :
Plaintiff, : Index No.:
: :
-against- : **AFFIDAVIT OF CONFESSION**
89 MONTCLAIR CLEANERS INC. (D/B/A 89 : **OF JUDGMENT**
MONTCLAIR CLEANERS) AND, HYUN C KIM, :
: :
Defendants. :
: :
----- x

STATE OF NEW YORK)

: ss.:
COUNTY OF New York)

1. I reside in New York County.
2. Pursuant to the terms of the Settlement Agreement and Release by and between Maria L Moreno (each a "Plaintiff" and collectively, "Plaintiffs") 89 Montclair Cleaners Inc. (d/b/a 89 Montclair Cleaners) and, Hyun C Kim (each a "Defendant" and collectively, "Defendants"), to which this Affidavit is annexed, I hereby confess judgment and authorize entry thereof against me individually and in favor of Plaintiff Moreno for the sum of Thirty Thousand Dollars and No Cents (\$30,000.00), less any payments made under the Settlement Agreement.
3. This affidavit of confession of judgment is for a debt justly due to Plaintiff Moreno under the terms of the Settlement Agreement, to which this Affidavit is annexed, which provides that Defendants are to submit a total sum of \$20,000.00 to Plaintiff Moreno.
4. The amount of this affidavit of confession of judgment represents the settlement amount of \$20,000.00 plus liquidated damages of \$10,000.
5. This affidavit is made upon good and valuable consideration, the sufficiency of which I acknowledge on behalf of Defendants, including, without limitation, the terms and provisions of the Settlement Agreement.
6. I hereby represent my understanding that upon Defendants' breach of the Settlement Agreement and failure to cure, this Confession of Judgment shall be docketed and entered in

in the Supreme Court of the State of New York as a judgment for \$30,000.00 (less any amounts already paid to Plaintiffs pursuant to the above schedule), against me, Hyun C Kim.



Hyun C Kim

Sworn to before me this
15th day of MAY, 2019



Choong Ki Lee

Notary Public

CHOONG KI LEE
Notary Public, State of New York
No. 31-01LE4961653
Qualified in New York County
Commission Expires Feb. 5, 2022